IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO.5392 OF 2005.

Vickers Systems International Ltd.... Petitioner.
V/s.
Shri Anand.A. Ghule ... Respondent.

Shri A.P. Patwardhan for the petitioner.

Shri Siddharth Karpe for the respondent.

CORAM : V.C.DAGA, J.

DATED : 17.4.2006.

P.C. :

. Heard learned Counsel for the petitioner.

Perused petition.

2. This petition is directed against the order dated 17.2.2005 passed by the Industrial Court, Pune, in Revision (ULP) No. 25/2005 dismissing revision application thereby confirming the order of the Labour Court, Pune, in Complaint (ULP) No.152/2003, whereby petitioner was directed to reinstate the workman-complainant in his original post within one week with continuity of service with 50% backwages from the date of termination till reinstatement.

3. The case of the petitioner is of total denial of the employer-employee relationship. According to the petitioner, respondent never worked with the petitioner-Company.

4. The complainant, in order to support his case in the complaint ,has filed photostat copies of documents on record. The complainant tried to prove his case by leading documentary as well as oral evidence.

5. It is no doubt true that the burden of proof lies upon the person who has to prove a fact. Burden of proof never shifts but onus of proof shifts (See- A. Raghavamma vs. A. Chenchamma AIR 1964 SC 136). It, therefore, cannot be disputed that the burden to establish employer-employee relationship was on the complainant - workman. During the course of trial onus kept on shifting.

6. The burden of proof can be discharged by leading positive evidence and/or cross-examinatiion of the rival witness and/or on the basis of inference drawn from the facts established. Needless to mention that where both parties lead evidence burden of proof loses its importance. (See- Paras Nath Thakur vs. Mohani Dasi- AIR 1959 SC 1204).

7. With the above understanding of law of burden of proof, let me turn to the facts of the case at hand to examine or whether or not the

complainant has proved his case.

8. The complainant has deposed in consonance with his complaint. He claimed to be in the employment of the petitioner prior to termination. He was cross-examined by the Advocate appearing for the petitioner-employer. The entire trend of cross-examination and the manner in which questions were put in the cross-examination to the workman, unequivocally, goes to show that almost all those questions were pregnant with admission of employer-employee relationship on the part of the employer. The cross-examination was suggestive of the employer-employee relationship between the parties.

9. It was sought to be brought on record in the cross-examination of the workman that the workman received wages after affixing revenue stamps and signature thereon, which the workman has replied saying vouchers on which his signature used to be obtained never used to carry revenue stamps. This trend of cross-examination also suggest admission of employer-employee relationship. After getting adverse answer, cross-examiner did not pursue cross -examination further to expose falsehood if any, in the answer given.

10. It was again suggested to the workman in the cross-examination that he was paid salary after obtaining his signature and sending vouchers to the Accounts Department. This trend of cross-examination runs counter to the very defence taken by the petitioner-employer that there was no relationship of employer-employee between the parties. Onus which was shifted on the employer was never discharged by the employer by leading evidence.

11. The employer sought to canvas that the documents on which reliance was placed by the workman were bogus and fraudulent. Let me examine whether this line of defence is proved or not.

12. Petitioner-employer has examined 2 witnesses but none of them has deposed that documents were fraudulent. This defence case was never put up to the workman during his cross-examination. On the contrary, in the cross-examination, both the witnesses of the employer have admitted documents on record including their signatures thereon. Admission of document means admission of facts and contains in the document as laid down by the Apex Court in Sitaram Motilal Kalal vs Santanuprasad Jaishankar Bhatt (AIR 1966 SC 1697). This admission of documents and proof thereof goes to establish

that the respondent-workman was very much in the employment of the petitioner-employer prior to his termination.

13. It is no doubt true that documents relied upon were photostat copies of originals; which the workman claims he himself has photostate them on the phostat machine of the petitioner-employer though without permission of the employer. It is immaterial how the documents were obtained. If they are relevant and proved, then those documents can always be read in the evidence. All these proved documents came to be exhibited in the evidence without any objection from the petitioner-employer. Once the documents are exhibited in evidence without any objection, that too; upon admission by the otherside witnesses, then, contents thereof are taken as proved. It is not open to take objection to admissibility or mode of proof of evidence for the first time in the higher Court (AIR 1965 Orissa 113). Once having allowed the documents to be exhibited upon admission of signatures thereon then proof thereof cannot allowed to be challenged contending that those documents were not original but photostat copies (AIR 1967 Orissa 129).

14. It was open for the petitioner-employer to produce original documents from their custody to

prove that the documents produced by workman were not genuine or that those were bogus documents. No such attempt was made by the employer.

15. In the light of above material on record, if the impugned order is examined, then one has to reach to the conclusion that the view taken by the Court below is a reasonable and possible view. By no standard it can be said to be a perverse view. Reliance placed on photostat documents cannot be said to be illegal especially when they were proved in accordance with law. Writ is not a remedy to cure all illegalities if any, in the proceedings unless prejudice is shown and established.

16. This Court not being a Court of appeal is not expected to reappreciate evidence. The above material is noticed only to show that the findings recorded by the Courts below are based on the evidence and relevant consideration available on record. The appreciation of evidence done by the Courts below is legal and proper.

17. Learned Counsel appearing for the petitioner tried to rely upon some judgments. However, none of them is applicable to the facts and circumstances of the case as such it is not necessary to refer to them.

18. Petition is thus, liable to be dismissed being devoid of any substance.

19. At this stage, learned Counsel for the petitioner stayed for stay of this order. Since all the orders are against the petitioner, there is no prima facie case for grant of stay. Prayer made is thus rejected.

20. In the result, petition is dismissed in limine with no order as to costs.

(V.C.DAGA,J.)